APPENDIX A-1

OPINION OF THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE ex rel. WILMER RHODES, *Appellant*, v. GRANT K. COOK, *Respondent*.	No. 38364 EN BANC Filed November 9, 1967

Appellant, petitioner below, purchased a single-family dwelling and moved it to his lot in Everett. He intended to rent the house, and in preparing it for rental found it necessary to do some plumbing work therein. He applied for a permit to do the plumbing, intending to purchase the materials and do the work himself. Appellant is not a certified plumbing contractor, and made no application for such certification. The permit was denied because the plumbing he intended to do was not in a house occupied or designed to be occupied by him.

Snohomish County has adopted the Uniform Plumbing Code, 1961 Edition, promulgated by the Western Plumbing Officials Association. The preamble to this code states that it is:

> An ordinance providing for the protection of the public health and safety, and the qualification and registration of persons engaged in the business of plumbing, or laboring at the trade of plumbing; requiring a permit and inspection for the installation or alteration of plumbing and drainage systems . . . .

Section 1.8 of said code provides that no plumbing work shall be commenced in any building without a permit. The challenged portion of the code, section 1.10, provides that no permit shall be issued for any plumbing

or drainage work regulated by the code except to a person holding a valid, unexpired and unrevoked plumbing contractor's certificate of qualification.

However, subsection (c) to said section 1.10 contains an exception to the certification requirement under six conditions:

(1) When the person desires to do plumbing or drainage work in a single family dwelling;

(2) When such dwelling is to be used exclusively for living purposes;

(3) When the person who will do the work is the bona fide owner of the dwelling;

(4) When the dwelling is occupied or designed to be occupied by said owner;

(5) Provided that said owner shall personally purchase all material; and

(6) Provided that such owner shall personally perform all labor in connection therewith.

The code also sets out detailed requirements for materials to be used, and for inspection and testing of all work before it is covered or hidden from view. The person doing the work is required to notify the board of plumbing inspectors when the work is ready to be inspected, and the work must meet the minimum standards set out by the code before approval will be given.

Appellant petitioned the trial court for a writ of mandamus, requiring respondent to issue a plumbing permit to appellant. His affidavit in support of his application for the writ stated that appellant was willing to comply with the standards for plumbing set out in the code, and to have his work inspected according to the code.

Appellant contends that since he intends to comply with the code standards, the requirement that nonresident homeowners be licensed to do plumbing on their

own premises is not reasonably related to the public health, and therefore unduly restricts his lawful activities upon private property, in violation of the due process provisions of the Washington State Constitution, art. 1, § 3, and in violation of the fourteenth amendment to the United States Constitution. Appellant contends also that the classification set out in section 1.10(c) between resident homeowners and nonresident homeowners with regard to the requirement for certification is arbitrary and unreasonable, in that it is not designed to protect the public health and safety, and therefore deprives him of equal protection of the laws, in violation of art. 1, § 12 of the Washington State Constitution, and in violation of the fourteenth amendment to the United States Constitution.

Due Process

The trial court, dismissing appellant's application for writ of mandamus, held that section 1.10 of the plumbing code does not violate state or federal constitutional due process standards.

Here on appeal, we must determine whether requiring certification or licensing of persons who desire to do plumbing work on residences which they own but do not intend to occupy, is reasonably related to the public health and safety, considering the detailed requirements set down in the plumbing code, and considering appellant's avowed intention to follow these requirements.

It has been long established that the police power extends to protection of the public health and safety, *Tacoma v. Fox*, 158 Wash. 325, 290 Pac. 1010 (1930), and that regulation of plumbing in the interest of health and safety is a valid exercise of the police power. *Spokane v. Latham*, 181 Wash. 161, 42 P.2d 427 (1935). Whether the facts of a particular case justify assertion of the police power is a question for the courts. *Bowes v. Aberdeen*, 58 Wash. 535, 109 Pac. 369 (1910); *Spokane v. Latham*, *supra*. There is a presumption that facts

justifying a regulation exist if such facts reasonably can be presumed. The test when lawful activity upon private property is involved has been said to be more stringent, however. This court stated in *Seattle v. Ford*, 144 Wash. 107, 257 Pac. 243 (1927), that where private rights exist the courts should review the legislative action and determine whether the legislative body has imposed unnecessary restrictions upon a lawful occupation or a lawful right. In *Brown v. Seattle*, 150 Wash. 203, 210, 272 Pac. 517 (1928), we quoted briefly from *Seattle v. Ford, supra* as follows:

> The courts will go far in sustaining the exercise of the police power for the preservation of the public health and safety, and in so doing private rights in conflict therewith are overriden; but on the other hand, the courts are equally concerned to see that, under the guise of protecting the public, private business—especially that carried on upon private property—is not arbitrarily restricted . . . .

We conclude that the requirement in section 1.10 for certification of nonresident homeowners is part of the total enforcement scheme of the code, and as such is reasonably related to the public health and safety. Such requirement is a valid exercise of the police power, and is not a violation of federal or state due process standards.

This conclusion is based upon the reasoning that a property owner who does plumbing for others, *i.e.* for prospective tenants or purchasers of his property, has a similar impact upon the public to a commercial plumber. He is to some extent carrying on a commercial activity, since plumbing is an integral part of the property he intends to rent or sell.

Appellant concedes that licensing of commercial plumbers is reasonably related to the public health and safety. Likewise, it must be conceded that one who does any amount of plumbing for others than himself and his immediate family, although it be more limited than

that done by commercial plumbers, is in a position similar to commercial plumbers, and can be required to be certified as to requisite skills.

Although one who does plumbing in a residence which he intends to rent or sell is subject to the laws of landlord-tenant, or of contract, such laws are not designed to protect the public health and safety. Nor are such laws adequate for this purpose.

Testimony at trial indicated that some plumbing defects are extremely difficult to detect, even under the detailed inspection required by the plumbing code, and that the plumbing inspectors rely to some extent upon the skill and care of commercial plumbers. Licensed plumbers generally do better work than do nonlicensed plumbers. It is, therefore, reasonable to limit noncertified work, and even though all work must be inspected, there is a legitimate reason for the certification requirement set out in section 1.10.

We cannot say that there is no reasonable relation to public health and safety in the requirement that nonresident homeowners be licensed to do plumbing for others; nor can we say that appellant has been arbitrarily deprived of a lawful right.

It is reasonable to assume that the county, when adopting the plumbing code, had such considerations in mind when it limited the right of homeowners to plumb their own premises. Obviously the impact to the public health and safety increases with the number of homeowners who might wish to plumb their premises for rental or sale, and with the number of such premises.

Equal Protection

The state and federal constitutional provisions for equal protection of the laws require that class legislation must apply alike to all persons within a class, and that reasonable grounds for the distinction must exist between those within and those without a designated

class. *Clark v. Dwyer*, 56 Wn.2d 425, 353 P.2d 941 (1960).

We conclude that the trial court was correct in finding no violation of equal protection of the laws in this case.

We said in *Clark v. Dwyer, supra*, at 431:

> Where possible, it will be presumed that the legislature has affirmatively determined any special facts requisite to the validity of the enactment, even though no legislative finding of fact appears in the statute. *State ex rel. Collier v. Yelle*, 9 Wn.2d 317, 333, 115 P.2d 373 (1941).

Since it is reasonable to assume that homeowners who do plumbing work for themselves and their immediate families in residences in which they reside or intend to reside, will tend to perform the work more carefully than would those who do plumbing work for strangers, it is reasonable to require certification of the latter class while not requiring certification of the former class. The public health and safety may adequately be protected in the first case by the inherent concern one has for his own welfare and that of his immediate family. This immediate concern may not be present when strangers are to use the premises, and therefore there is no adequate substitute for the certification requirement. We find a logical connection between the object of the legislation, *i.e.*, the protection of the public health and safety, and the requirement that one must intend to live in a residence himself if he is to be issued a permit to do plumbing work without first being examined as to requisite skill and certified as a plumbing contractor.

Appellant's most telling argument is that since in any event all work must be inspected and must meet the minimum standards set out by the plumbing code, it does not matter who does the work. Appellant concedes, of course, that such reasoning does not apply to commercial plumbers who hold themselves out for hire. The

additional requirement that such plumbers be licensed after passing an examination for requisite skill is reasonably related to the public health and safety.

We hold that the additional licensing requirement for nonresident homeowners who desire to do plumbing work for members of the public other than themselves and their immediate families is also reasonably related to the public health and safety.

The judgment of the trial court is affirmed.

FINLEY, C. J.

We concur:

Donworth, J.

Hunter, J.

Hamilton, J.

Hale, J.

Neill, J.

DISSENT

WEAVER, J. (Dissenting)—I dissent for I believe that a portion of § 1.10(c)[1] of the Uniform Plumbing

1. (c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith.

Code, 1961 Edition, promulgated by the Western Plumbing Officials Association and adopted by Snohomish County, violates the equal protection clause of our state constitution, art. 1, § 12, and the due process provision of art. 1, § 3, as well as the fourteenth amendment to the United States Constitution.

Class legislation must apply alike to all persons within a class, and *reasonable grounds* must exist for making a distinction between those within, and those without, a designated class. *Clark v. Dwyer*, 56 Wn.2d 425, 435, 353 P.2d 941 (1960).

Under the police power exercised for the protection of the public health and safety five of the six conditions for the issuance of a plumbing permit to one not a licensed plumber are reasonable grounds defining a permissible class. The conditions are: (1) the plumbing must be done in a single family dwelling; (2) the dwelling must be used exclusively for living purposes; (3) the person doing the work must be the bona fide owner thereof; (4) the owner must *personally* purchase all materials and (5) *personally* perform all labor in connection therewith. The work done by one within the class is subject to the strict standards of the plumbing code.

The sixth condition for the issuance of a plumbing permit to one not a licensed plumber—"that the same [premises] are occupied by or designed to be occupied by said owner"—is an alien among the other conditions. It does not, to my mind, meet the test that there must be some logical connection between the object sought to be accomplished by the legislation and the means prescribed to achieve it. *Brown v. Seattle*, 150 Wash. 203, 211, 272 Pac. 517 (1928); *Seattle v. Ford*, 144 Wash. 107, 110-11, 257 Pac. 243 (1927); *Spokane v. Latham*, 181 Wash. 161, 164, 42 P.2d 427 (1935); *State v. Spino*, 61 Wn.2d 246, 377 P.2d 868 (1963).

The trial court based its conclusion, in the main, upon a finding that the condition under attack

prevents subterfuge and provides protection from a person taking ownership of property for the purpose of being able to plumb it himself without having to meet the licensing requirements of the Code for persons doing plumbing for others, . . .

It should be observed that the ordinance contains no requirement that a resident owner continue to live in his house for any particular length of time. An owner may obtain a permit, do his plumbing work in compliance with the code, live in the house for a time, be it ever so short, and then sell or lease it to others. In no material respect would such an owner differ from one who, from the beginning, plans to rent his house to others and who personally performs identical work with full code compliance. In each case there is the possibility of evasion of the law insofar as bona fide ownership is concerned. In each case the public health and safety is protected by exacting full compliance with code requirements. I fail to see that the requirement that the owner live in the house, or intend to live in it, has any logical bearing on whether the work will pass inspection, nor will the requirement prevent attempted evasion of bona fide ownership. Neither does residency have any logical connection with the object sought to be accomplished by the ordinance—the protection of public health and safety.

The majority opinion does not adopt the trial court's rationale; its main thrust is that the requirement of residency will result in a more careful and professional job of plumbing. The conclusion does not follow. All of the evidence indicates that the plumbing inspector can insure compliance with the technical requirements of the code, whether the work be done by a resident or a nonresident. When these requirements have been met and approved, there is no threat to public health and safety.

Some concern has been expressed that if appellant, as the owner, is issued a permit to plumb his house with-

out a plumber's license, it will be necessary to permit a person who owns two or more houses, or who is a "speculative builder of single dwelling homes," to do likewise.

Although this question is not before us in the instant case, it is my present thinking—dicta that binds no one—that this conclusion does not follow. A permit might be refused, not upon the basis of nonresidency, but because the owner is "engaged in the business of plumbing or laboring at the trade of plumbing" as described in the preamble of the code (quoted in the majority opinion). The owner's work would, in these circumstances, have an impact upon the public similar to that of a licensed plumber. The owner would then be engaged in a commercial activity that requires a plumber's license for the protection of the public health and safety, but these are not the facts before us.

I would hold that the requirement of § 1.10(c) of the Uniform Plumbing Code of Snohomish County that an owner of a single family dwelling occupy or intend to occupy the dwelling in order to obtain a permit to do plumbing or drainage work upon it is arbitrary and violates const., art 1, § 3 and § 12, and the due process clause of the United States Constitution, amendment 14. I would reverse the judgment with direction to issue the writ of mandate.

WEAVER, J.

I concur in Judge Weaver's dissent.

HILL, J.

We concur.

ROSELLINI, J.

APPENDIX A-2

REMITTITUR OF THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

State ex rel. WILMER RHODES, *Appellant*, v. GRANT K. COOK, *Respondent*	REMITTITUR No. 38364 Snohomish County No. 81545

The State of Washintgon to: The Superior Court of the State of Washington in and for Snohomish County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on November 9, 1967, became the final judgment of this court in the above entitled case on January 3, 1968. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Two hundred fifty three and 36/100 dollars ($253.36) in favor of respondent and against appellant and his cash bond.

The petition for rehearing was denied by an order dated January 3, 1968.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 4th day of January, A.D. 1968.

WILLIAM M. LOWRY, Deputy
Clerk of the Supreme Court, State of Washington

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APPENDIX B-1

ORAL RULING FROM BENCH OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

STATE EX. REL WILMER RHODES, *Petitioner*, -vs- GRANT K. COOK, *Respondent*.	No. 81545 ORAL RULING FROM BENCH

(At the close of all the testimony and argument of counsel in the above entitled matter, the following oral ruling was delivered on March 22, 1965 from the bench):

THE COURT: First of all I am grateful to counsel on both sides of this case for the excellent presentations they have made.

The Court is called upon to discharge one of its most important duties, and that is to determine whether or not the constitutional private right of a citizen has been violated by provisions of the Snohomish County Code regulating plumbing. Plaintiff is the owner of property in Snohomish County and desires to repair a house and install plumbing by doing his own work. He has applied to the proper County official for a permit. This permit has been refused because plaintiff admits that he intends to repair this property for the purpose of rental, and that he does not intend to occupy the premises himself. The County ordinance attacking the problem of protecting the public by insuring proper and sanitary plumbing has several angles, only two of which we are herein concerned with. It prohibits all persons from doing plumbing work on any premises without securing a permit. These permits are issued to two classes: (1)

a licensed plumber, and (2) to an owner who desires to plumb his own place for personal occupancy. Plaintiff has made no attempt to qualify under the statute as a plumber, although it is clear from the code that he could make application to qualify as a plumber and thus be permitted, if he passed the examination, to plumb his own house. He has made no attempt to do that, contending that the restriction in the code against his doing so as an owner is unreasonable, unconstitutional, and has no relationship to health and welfare; because he is willing to comply with all provisions of the code as to the manner with which work is done by submitting proper drawings which must be approved by proper authority, and complying in every way with the provisions of the code. The only place where he falls down is that he isn't a licensed plumber.

It is conceded and, of course, it is obvious, that the regulation of plumbing by government is a perfectly valid constitutional exercise of governmental power. There is no higher obligation of government than to protect the health of its citizens. On the other hand, courts, and those who have responsibility in this area, must protect the constitutional rights of a private property owner in his right to use his property as he pleases as long as he doesn't hurt his neighbor, or contribute to some undesirable result or evil. It is clear that the general area upon which government has entered here is a valid area. When we have determined that we must remember a basic principle of constitutional law, particularly as it relates to police power, that when it is determined that government is in a legitimate area, that the legislative authority is given a very wide discretion in determining how it shall attack an evil, and a very wide discretion in the methods it adopts to protect the public, particularly in regard to health. It is clear, therefore, that the licensing provisions are valid. It is true that anybody can properly plumb a house in accordance with the code if they are skilled enough, but it certainly is within governmental power to protect the public from those who may not be skilled to require one

to qualify to engage in the business when holding out as a plumber. Plaintiff does not attack the validity of the licensing ordinance as it relates to commercial plumbers.

It has been proven here that the plumbing inspector may protect the health of the citizens of this county by requiring proper drawings, by making inspection of the premises to see that the work is done in a workmanlike manner, that the materials are in accordance with the code, that the materials are placed in a proper way, and he has very broad power in making inspection, which would in most instances, I have little doubt, adequately protect the public. But the issue before the Court is does the County have the right to go further and require that everyone must hire a licensed plumber to do plumbing on a premises to be occupied by someone other than the owner? That is the ultimate and basic question. It has been pointed out to me by the County Plumbing Inspector that work done by licensed plumbers in most instances is of better quality than that of home owners, and that the drawings and plans of licensed plumbers are more accurate and better than that of home owners, and that would appear to be a reasonable conclusion. He tells me that it takes more time to deal with a person other than a licensed plumber, that inspections are not requested in a timely manner in many instances, and that more often the non-plumber owner does not follow the inspection requirements as minutely or as well as a licensed plumber. In view of these circumstances, is it valid for the government to say, "Well, Mr. Plaintiff, even though you own these premises you must hire a licensed plumber or you have to qualify as a plumber if you are to plumb your house for other people." I cannot say that this provision of the ordinance is unlawful, unreasonable, arbitrary, capricious, or unnecessary. I hasten to add that if I were a member of the board of county commissioners, city council or state legislature, the argument presented by plaintiff in this case would be very compelling and I would vote against it unless it allowed a man to plumb his own premises according to

the code. I would be more concerned with what is done, rather than who did it. This is not to say as a judicial officer I can condemn the lawmaker who believes these other provisions to be necessary to protect the public and provide a workable act to be enforced without complications, particularly when in an area where government obviously has a right to be. Even provisions which may be onerous to some extent to the property owner must be born if they relate to health and have direct relationship to the problem and evil to be remedied. I cannot say that the rights of property, and rights of a man to use his own property as he sees fit, must not yield, at least to this extent that if he is going to repair his property for other people by doing plumbing, that he must hire a licensed plumber to do it or qualify as a plumber himself. It is within reason. I am conscious of the fact that many of these areas of government regulation are promulgated by those who are interested in a certain art or profession and that the regulations are promulgated by people who are interested for not wholly unselfish reasons. This applies to doctors, beauticians, lawyers, as well as plumbers. The fact remains that even though they be parties who proposed the passage of such legislation, it is none the less justified in order to advance the public health and is valid.

As to the argument relating to classification, in that there is no sound distinction between a man who plumbs a house he occupies himself and a house he owns to be occupied by others, there is a distinction,—it permits a man to plumb his own house if he is going to live there himself, while if he is to allow others to occupy the place, he cannot do so. Some protection along this line is required in order to prevent subterfuge and be used as a device by taking ownership of property for the bare purpose of plumbing it and then selling it. I see where it bears some relationship to the effective enforcement of the Act.

As to the argument of the County that the plaintiff has not exhausted his remedy, I find no merit. The defendant will prevail.

APPENDIX B-2

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

WILMER RHODES, *Petitioner*, vs. GRANT K. COOK, *Respondent.*	NO. 81545 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come regularly on for trial on the 30th day of December, 1964 and on March 22, 1965 before the Honorable Charles R. Denney, Judge of the above-entitled Court, the petitioner, Wilmer Rhodes, appearing in person and with his attorneys, Edward A. Niemeier and Bruce L. Engel, the respondent, Grant K. Cook, appearing in person and with his attorney, Sten H. Dagg, Deputy Prosecuting Attorney for Snohomish County, State of Washington, upon petitioner's application for Writ of Mandamus wherein petitioner prayed that the Court issue a Writ of Mandamus directed to Grant K. Cook as Chief Plumbing Inspector for Snohomish County to issue petitioner a plumbing permit, and the Court having heard testimony on the issues in the Cause, having considered the exhibits admitted into evidence, having considered the evidence, files, records, affidavits herein and being otherwise fully advised in the premises, now makes the following:

FINDINGS OF FACT

I

Petitioner, Wilmer Rhodes, is and was on October 15, 1964 the owner of a house and real property com-

monly known as 1805-100th Street, South West, Everett, Snohomish County, Washington.

II

On October 15, 1964 petitioner applied to respondent, Grant K. Cook, Chief Plumbing Inspector for Snohomish County, for a permit to do plumbing on said property. Petitioner desired to personally perform all labor in connection with the installation of plumbing fixtures on the property, but petitioner did not intend to occupy the house as his own personal residence and, in fact, petitioner intended to lease the house as living quarters for others.

III

Grant K. Cook, as Chief Plumbing Inspector for Snohomish County, refused to issue a plumbing permit to petitioner to plumb said property for the reason that the UNIFORM PLUMBING CODE as issued for the year 1961 by the WESTERN PLUMBING OFFICIALS' ASSOCIATION and adopted as an Ordinance of Snohomish County by proper resolution of January 22, 1962 provides in Section 1.10 thereof that:

(a) "No permit shall be issued to any person to do or cause to be done any plumbing or drainage work regulated by this code, except to a person holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3, except when and as otherwise hereinafter provided in this section.

* * * *

(c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide

> owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith."

and petitioner did not qualify for a permit under said Sections.

IV

Petitioner did not qualify for a permit under Section 1.10(a) for the reason that he did not hold a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3 of said Code and petitioner had made no attempt to qualify under Section 2.3, although Section 2.3 and succeeding sections of said Code allow petitioner to make application for said Certificate and if he passed the examination, to obtain said Certificate and thereby obtain a permit. Petitioner did not qualify for a permit under Section 1.10(c) for the reason that he did not intend to occupy said house as his own residence, but intended to lease the house as living quarters for others.

V

Petitioner is willing to comply with all other requirements of said Code, but contends that Section 1.10(c) of said Plumbing Code is unlawful in that in denying petitioner a permit to do plumbing on said property, said Section 1.10(c) violates Amendment XIV of the United States Constitution and Article I, Sections III and XII of the Washington Constitution by imposing unnecessary, discriminatory, arbitrary, oppressive and unreasonable restrictions upon petitioner's lawful right to carry on private business on his property, and by denying to petitioner equal protection under the Law.

VI

Section 1.10(a) of said Code is necessary; bears a reasonable relationship to the public health, safety and welfare; and is a reasonable classification because:

Plumbing work done by licensed plumbers, i.e. those qualifying for a permit under Section 1.10(a), in most instances, is of a better quality than that done by unlicensed plumbers on their own residences, i.e. those persons obtaining a permit under Section 1.10(c). The drawings and plans of said licensed plumbers are generally more accurate and better than that of persons doing plumbing on their own residences under a permit granted under Section 1.10(c). There is a greater risk of persons doing plumbing on their own residences under a permit granted pursuant to Section 1.10(c) of their buying plumbing materials that are inferior and do not meet the minimum material requirements of said Code than when acquisition of materials is made by a licensed plumber under Section 1.10(a). The work of a person obtaining a permit under said Section 1.10(c) to do work on his own residence generally requires a greater degree of inspection than work done by a licensed plumber under Section 1.10(a). Persons doing plumbing under a permit granted pursuant to Section 1.10(c) on their own residence generally do not request inspections in as timely a manner as licensed plumbers under Section 1.10(a). A person doing plumbing on his own residence under a permit granted pursuant to Section 1.10(c) generally does not follow inspection requirements as minutely as a licensed plumber doing work pursuant to a permit granted under Section 1.10(a). Generally, the two plumbing inspectors for Snohomish County must use more time to ascertain whether work done by a person on his own residence by himself, pursuant to a permit granted under Section 1.10(c), meets the requirements of said Code than work done by licensed plumbers under Section 1.10(a).

VII

The UNIFORM PLUMBING CODE, 1961 Edition of the WESTERN PLUMBING OFFICIALS' ASSOCIATION, as adopted by Snohomish County, on Page 1-a, Paragraph 2 thereof, provides:

"If any section, subsection, sentence, clause, phrase

or portion of this code is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this code."

Sections 1.7 and 1.8 of said Code provide that no plumbing work shall be commenced on any premises until a permit to do such work has been obtained pursuant to the Code and any violation of the Code provisions by said sections is deemed a misdemeanor punishable by fine and/or imprisonment.

VIII

Section 1.10(c) is lawful, necessary, bears a reasonable relationship to the public health, safety and welfare and is a reasonable classification and is not discriminatory, arbitrary, oppressive and unreasonable because it permits a person to plumb his own house if he is going to live there himself; however, if he intends the house as rental property for occupancy by others, he may not himself do the plumbing, unless he meets the requirements of 1.10(a) by obtaining a permit after obtaining a Plumbing Contractor's Certificate of Qualification or Registration as provided by said Code.

IX

Section 1.10(c) bears a reasonable relationship to the effective enforcement of the entire plumbing code, is necessary, and is a reasonable classification for the reason that it prevents subterfuge and provides protection from a person taking ownership of property for the purpose of being able to plumb it himself without having to meet the licensing requirements of the Code for persons doing plumbing for others, i.e. obtaining a Plumbing Contractor's Certificate of Qualification or Registration.

FROM THE FOREGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

I

That the Court has jurisdiction over the subject matter and the parties to this action and this matter is properly before the Court.

II

Petitioner does not have a plain, speedy and adequate remedy at law.

III

The enactment by Snohomish County of January 22, 1962 adopting by ordinance the UNIFORM PLUMBING CODE as issued for the year 1961 by the WESTERN PLUMBING OFFICIALS' ASSOCIATION wherein Snohomish County regulates the installation of plumbing is a valid exercise of police power.

IV

Section 1.10(c) of said Code which provides:

> (c) "Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner, provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith."

in regulating the installation of plumbing is a valid exercise of police power and said Section is reasonably related to the public health, safety and welfare of Snohomish County.

V

Section 1.10(c) of said UNIFORM PLUMBING CODE does not deprive petitioner of life, liberty or property without due process of law as provided by Amendment XIV, Section I, of the United States Constitution and Article I, Section III, of the Washington State Constitution.

VI

Section 1.10(c) of said UNIFORM PLUMBING CODE is a reasonable classification and does not deny to petitioner equal protection of the laws as is provided for by Amendment XIV, Section I, of the United States Constitution and Article I, Section XII, of the Washington State Constitution.

VII

Petitioner is not entitled to a Writ of Mandamus, and the Alternative Writ of Mandamus issued herein on November 20, 1964 should be dismissed.

DONE IN OPEN COURT this 4 day of May, 1965.

CHARLES R. DENNEY

JUDGE

Presented by:

STEN H. DAGG

STEN H. DAGG, Deputy Prosecuting Attorney
for Snohomish County, Attorney for Respondent

Copy Received, Approved only as to Form, and
Notice of Presentment Waived this 3rd day of
May, 1965.

E. A. NIEMEIER

of Attorneys for Petitioner

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APPENDIX B-3

JUDGMENT OF DISMISSAL OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF SNOHOMISH.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

WILMER RHODES, *Petitioner,* vs. GRANT K. COOK, *Respondent.*	NO. 81545 JUDGMENT OF DISMISSAL

THIS MATTER having come regularly on for trial on the 30th day of December, 1964 and on March 22, 1965 before the Honorable Charles R. Denney, Judge of the above-entitled Court, the petitioner, Wilmer Rhodes, appearing in person and with his attorneys, Edward A. Niemeier and Bruce L. Engel, the respondent, Grant K. Cook, appearing in person and with his attorney, Sten H. Dagg, Deputy Prosecuting Attorney for Snohomish County, State of Washington, upon petitioner's application for Writ of Mandamus wherein petitioner prayed that the Court issue a Writ of Mandamus directed to Grant K. Cook as Chief Plumbing Inspector for Snohomish County to issue petitioner a plumbing permit, and the Court having heard testimony on the issues in the cause, having considered the exhibits admitted into evidence, having considered the evidence, files, records, affidavits herein and having made and entered its Findings of Fact and Conclusions of Law and being otherwise fully advised in the premises, NOW, THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the application of petitioner, Wilmer Rhodes, for a Writ of Mandamus directed to respondent,

Grant K. Cook, requiring Grant K. Cook, as Chief Plumbing Inspector for Snohomish County, to issue petitioner a plumbing permit, be and the same is hereby denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Alternative Writ of Mandamus issued out of this Court on November 20, 1964, be and the same is hereby dismissed.

DONE IN OPEN COURT this 4 day of May, 1965.

CHARLES R. DENNEY

JUDGE

Presented by:

STEN H. DAGG

STEN H. DAGG, Deputy Prosecuting Attorney

Copy Received and Approved only as to Form and Notice of Presentment Waived this 3rd day of May, 1965.

E. A. NIEMEIER

of Attorneys for Petitioner

APPENDIX C

STATE OF WASHINGTON V. FRANK RANDALL, OF THE SUPERIOR COURT OF THE STATE OF WASHINGTON, COUNTY OF KITSAP

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR KITSAP COUNTY

STATE OF WASHINGTON,
Plaintiff,
- vs -
FRANK RANDALL,
Defendant.

NO. 44599
COURT'S ORAL OPINION

BE IT REMEMBERED that on Tuesday, the 27th day of October, 1964, at the hour of 9:30 A.M., the above-entitled and numbered cause came regularly on for hearing before the Honorable Frank W. Ryan, one of the judges of the above-entitled court, sitting in Department No. 2 thereof, at the Kitsap County Courthouse in the City of Port Orchard, County of Kitsap, State of Washington.

The plaintiff, State of Washington, appearing through the Prosecuting Attorney, James Munro; the defendant appearing in person and through his attorney, Edward A. Niemeier, of the Law Firm of Niemeier & Hamilton, Poulsbo, Washington.

WHEREUPON, on Wednesday, the 28th day of October, 1964, the following oral opinion was issued by the Court:

THE COURT: Members of the Jury: During your absence, counsel for the defendant has made a motion to dismiss this case at the close of the plaintiff's evidence.

The defendant has made this motion on the grounds of lack of sufficient evidence to convict and on the further grounds that the ordinance involved is unconstitutional or the section of the ordinance involved is unconstitutional.

This motion presents legal questions and you know from the experience you have had on the jury and from reading your juror's pamphlet, that the Court must determine the law. The jury determines the fact.

Now, the question presented to me at this time is purely a question of law because the only facts before the Court are those presented by the testimony of Mr. Love, the Plumbing Inspector, and this is the total case for the State. The State has rested its case, so there is no more evidence upon which to base a conviction except the testimony of Mr. Love. A legal question has been presented to the Court as to whether or not this case should be dismissed at this time.

Now, long before this, a motion was made by the defendant, months ago, to dismiss on these same grounds. I held at that time for the State and against the defendant because there was no evidence before the Court at that time; no evidence whatsoever upon which to determine this key question involved here which is whether or not this section of the ordinance is necessary for the protection of the public's health, welfare, and safety. There is a nice Constitutional question here and I think you can see what it is. It is the conflict between the rights of society at large, the right to be protected in matters of health, safety, and welfare.

Generally speaking, talking about plumbing ordinances in a very general way, I think you can recognize that they are necessary for public health, safety, and welfare. You might have a neighbor who would have a septic tank that would overflow; there may be broken plumbing with fluid pouring out, or an open drain. There are reasons for this type of an ordinance, but then we get to a question of whether some particular phase of it does have any direct connection with public health, welfare, and safety, and that is where we are here.

Or [sic.] course, there is a great deal of difference between liberty and license. We have liberty in this county, but that doesn't mean we have license. Our liberty ends

where the other fellow's rights begin. It must be with due respect and regard for the rights of others that we exercise the liberty that we as individuals have and that is the problem here. So, although I am going to dismiss this case at this time, I thought the jury had a right to be here to know why I am doing this. I don't want you to think that I am usurping your rights or your power. I am not. I am deciding this strictly on a question of law and I thought you had a right to know why.

Mr. Love testified that if a job is properly done, it makes no difference. It is of no consequence as to who has done the job because the inspecting is the final test and determines whether or not it has been properly done. He further testified that after the inspection has been completed, all has been done that can be done to protect the public's health, welfare, and safety. If that is the case, then there is no reason why a person cannot perform plumbing on his own premises. If there is no danger to other people, and Mr. Love has testified that there isn't any danger to other people, that is the answer to it.

There is a difference between this and licensing a man to practice the trade of plumbing in a community and to hold himself out as a plumber. That is something entirely different because he is then soliciting business from other people and if he is incompetent, if he is unqualified, he would be practicing a fraud upon the public to begin with. He might give people the wrong advice; he might tell them they need two septic tanks when they didn't need anything at all. There is no end to what he might do. But we are not concerned with that.

We are concerned here with a right of a person to do this work on his own property and the only distinction made by the ordinance is as to whether this is a single family dwelling to be occupied by him and his family alone or whether it may be used by other people. This is the only distinction, but it is still on his own property. He is not holding himself out, he is not asking

other people to trade with him or do business with him, or to pay him money for his advice or his work. It is his own property; it is his own business. If the public health is protected, and the testimony of the inspector, Mr. Love, is that the health is protected if the job is inspected, it makes no difference who has done it—whether an amateur or a professional, whether a large contractor in the State of Washington or the man who owns the property—the inspector can tell by his test as to whether the job has been well done and safely done for the protection of society at large.

There is precedent for this in the State of Washington. There is a case decided by our State Supreme Court, *Spokane v. Latham*. This was decided in 1935. In that case the City of Spokane has an ordinance permitting a Durham system of plumbing—whatever that is, the experts here perhaps can tell me, I don't know—but it prohibited this type of plumbing in three-story buildings, but permitted it in buildings of over three stories. Our Supreme Court held that the ordinance was unconstitutional on the very basis that I am holding this section of the ordinance is unconstitutional. *Spokane v. Latham*, 181 Wash. Reports, 162:

> ". . . (1) An ordinance covering the material of pipe, the size thereof to be used in plumbing, for the licensing of plumbers, and the inspection of the plumbing installed, is a valid exercise of the police power. *New Castle v. Withers*, 291 Pa. 216, 139 Atl. 860, 57 A.L.R. 132; *Kleinheim v. Bentley*, 98 Kan. 431, 157 Pac. 1190; *Tacoma v. Fox*, 158 Wash. 325, 290 Pac. 1010. The reason such ordinances are sustained is because they bear a direct and substantial relation to the public health or the public welfare.
>
> "In the case now before us, there is no question of public health involved. The plumbing inspector of the city of Spokane, called as a witness by the city, testified:
>
> " 'Q. Now, Mr. Flickenger, then you still say that

so far as the health of the people are concerned and the sanitary conditions, that the Durham System of plumbing is just as good in a one-story building as it is in a ten-story building; *A.* I do. . . . *Q.* As a matter of fact the objection to the Durham, is largely on the part of the lead manufacturers and the plumbers who have learned to wipe joints, and not on account of public health. *A.* You couldn't make a public health issue out of it. *Q.* Public health isn't an issue in it? *A.* I don't think it is. Either one must be properly installed in order to protect the health.'

"The question of the public health not being an issue, the only remaining question would be whether the prohibiting of the Durham system of plumbing in a building of less than three stories, while it is permitted in all buildings of three stories or over, bears any reasonable or substantial relation, to the public welfare. If it does bear such relation, it is a valid enactment; otherwise, it is invalid. *Brown v. Seattle*, 150 Wash. 203, 272 Pac. 517; *Patton v. Bellingham*, 179 Wash. 566, 38 P. (2d) 364."

That is the same thing we have here. If this is properly installed, regardless of who did it, public health is protected. The Supreme Court went on to say:

"Whether the facts of a particular case warrant the assertion of police power, is a judicial question to be determined by the courts. *Bowes v. Aberdeen*, 58 Wash. 535, 109 Pac. 369, 30 L.R.A. (N.S.) 709. If a state of facts can reasonably be presumed to exist which would justify the ordinance, the court will presume that such facts did exist, and that the ordinance was passed for this reason. *State v. Pitney*, 79 Wash. 608, 140 Pac. 918, Ann. Cas. 1916A 209."

When this point was raised before in the present case, it was purely a question of law without any facts whatsoever in support of it. However, now all of the facts that the State can produce are before the Court

and those facts clearly show and can be understood and interpreted in only one way. It is not a matter where reasonable minds could differ in any way. Mr. Love has said, "Yes, either way, regardless of who does it, it is equally safe."

Now, as to the point raised by counsel, the question of the amount of fees. I don't think it is necessary to pass on that.

The only thing before the Court is the affidavit. Mr. Love wasn't aware of it. He didn't know about it. But the affidavit of the Chief of the Department was that they had just barely balanced the cost of operation. If those are the facts, I don't think the fees would be unreasonable.

The question of adoption of this Code by reference was provided for by the State Legislature in the 1961 Session in Chapter 27 which was prior to the time that this ordinance was adopted by the County.

Now, further, in the brief of amicus curiae, as pointed out by counsel, an attorney who is not appearing at this time in this case but who appeared as amicus curiae on behalf of certain persons interested in bringing about the conviction of the defendant, it was virtually conceded that if the facts were without question or contest, such as they now appear to be, that the ordinance must be held unconstitutional. It was said there:

> "If it is true that inspection alone is a complete safeguard for the public, then the argument of the defendant is well taken and a further restriction is both unnecessary and unreasonable. It would seem to follow that the State should have no further interest in regulating plumbing. In other words, the entire licensing provisions including those portions regulating people holding themselves out to the public as plumbers, would seem to be an unnecessary restriction on the right to engage in a 'lawful occupation' and should therefore fail."

So, it is virtually conceded, at least by persons who have put themselves in a position, allied themselves with the prosecution here, that it must be conceded under the facts as they now exist that the Court must hold that this section of the ordinance is unconstitutional.

I want to say in defense of our Prosecuting Attorney, and that may seem strange—I don't think Prosecuting Attorneys have to be defended very often; they are generally on the other side of the fence—I know Mr. Munro has felt duty-bound to bring this prosecution even though he has been aware at all times that there was a serious Constitutional question involved. But he is the Prosecuting Attorney. It is his duty to represent the County and to enforce its ordinances. This ordinance was adopted by our County Commissioners, and it was his duty to prosecute this case. I am sorry that it could not have been more easily disposed of. The offense involved here is not serious. I think it calls for a penalty of not less than $25.00, nor more than $100.00 fine, or not more than ninety days in jail, or both. It is a petty offense in many ways, and yet I think you all can see that there are some ramifications and undertones that go far deeper than just a minor law violation. So in those respects, it isn't an important case. In fact, the cost of calling the jury together here alone is about five to six times what the maximum penalty would be, unless you can assess ninety days in jail at a higher price. But these questions involved may be important questions, Constitutional questions. We could go on for hours and hours discussing the ramifications of these Constitutional questions that are involved here.

I feel the only thing presented to the Court at this time is a question of law and I feel that I must rule on that, and thus must dismiss the case.

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APPENDIX D

PERTINENT PROVISIONS OF THE SNOHOMISH COUNTY, STATE OF WASHINGTON UNIFORM PLUMBING CODE

Sec. 1.4—Duties of the Administrative Authority

The Administrative Authority shall maintain public office hours necessary to efficiently administer the provisions of this code and amendments thereto and shall perform the following duties:

(1) Require submission of, examine and check plans and specifications, drawings, descriptions, and/or diagrams necessary to show clearly the character, kind and extent of plumbing work covered by applications for a permit and upon approval thereof shall issue the permit applied for.

(2) Collect all fees for permits issued as provided by this code, issue receipts therefor in duplicate, the duplicate copy of which shall be maintained as a record of his office.

(3) Administer and enforce the provisions of this code in a manner consistent with the intent thereof and shall inspect all plumbing and drainage work authorized by any permit to assure compliance with provisions of this code or amendments thereto, approving or condemning said work in whole or in part as conditions require.

(4) Issue upon request a Certificate of Approval for any work approved by him.

(5) Condemn and reject all work done or being done or materials used or being used which do not in all respects comply with the provisions of this code and amendments thereto.

(6) Order changes in workmanship and/or materials essential to obtain compliance with all provisions of this code.

(7) Investigate any construction or work regulated by this code and issue such notices and orders as provided in Section 1.6.

(8) Keep a complete record of all the essential transactions of his office.

(9) Transfer all fees collected by him to the proper authority provided by law to receive such funds.

(10) Maintain an official register of all persons, firms or corporations lawfully entitled to carry on or engage in the business of plumbing or to labor at the trade of plumbing to whom a Plumber's Certificate of Qualification has been issued in accordance with provisions of Part Two of this code.

Sec. 1.8—Permit Required

(a) No plumbing or drainage work shall be commenced in any building or premises until a permit to do such work shall have been first obtained from the Administrative Authority.

(b) A separate permit shall be obtained for each building or structure.

(c) No person shall allow any other person to do or cause to be done any plumbing or drainage work under any permit secured by such person except persons in his employ.

Sec. 1.9—Work Not Requiring Permit

No permit shall be required in the case of any repair work as follows: The stopping of leaks in drains, soil, waste or vent pipe, provided, however, that should any trap, drainpipe, soil, waste or vent pipe be or become defective and it becomes necessary to remove and replace the same with new material in any part or parts, the same shall be considered as such new work and a permit shall be procured and inspection made as hereinbefore provided. No permit shall be required for the clearing of stoppages or the repairing of leaks in pipes,

valves or fixtures, when such repairs do not involve or require the replacement or rearrangement of valves, pipes, or fixtures.

Sec. 1.10—To Whom Permits May Be Issued

(a) No permit shall be issued to any person to do or cause to be done any plumbing or drainage work regulated by this code, except to a person holding a valid unexpired and unrevoked Plumbing Contractor's Certificate of Qualification or Registration as required by Section 2.3, except when and as otherwise hereinafter provided in this section.

(b) No permit shall be issued to any person to do or cause to be done any sewer or private sewage disposal system work regulated by this code, except to a person holding a valid unexpired and unrevoked Sewer or Sewage Disposal Contractor's Certificate of Qualification or Registration as required by Section 2.3.

(c) Any permit required by this code may be issued to any person to do any plumbing or drainage work regulated by this code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that the same are occupied by or designed to be occupied by said owner; provided, that said owner shall personally purchase all material and shall personally perform all labor in connection therewith.

Sec. 1.11—Application for Permit

Any person legally entitled to apply for and receive a permit shall make such application on forms provided for that purpose. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The Administrative Authority may require plans, specifications or drawings and such other information as he may deem necessary.

If the Administrative Authority determines that the plans, specifications, drawings, descriptions or information furnished by the applicant is in compliance with this code, he shall issue the permit applied for upon payment of the required fee as hereinafter fixed.

Sec. 1.13—All Work to be Inspected

All plumbing and drainage systems shall be inspected by the Administrative Authority to insure compliance with all the requirements of this code.

Section 2.1—Definition of Plumbers and Contractors

(a) A Plumbing Contractor is a person who may conduct, carry on or engage in the business of plumbing.

* * * *

Sec. 2.2—General Provisions

(a) It shall be unlawful for any person to conduct, carry on or engage in the business of plumbing or act in the capacity of a plumbing contractor, without first having had issued to him a valid Plumbing Contractor's Certificate of Qualification or Registration by the Board of Plumber Examiners.

* * * *

Sec. 2.3—Application for Certificate of Qualification or Registration

Any person who is required by this code to possess a plumber's Certificate of Qualification or Registration shall make application therefor to the Board of Plumber Examiners on application blanks provided for that purpose by the secretary of said Board and pay the fee as hereinafter provided.

Sec. 2.7—Issuance of Certificate of Qualification or Registration

The Board of Plumber Examiners shall issue Certificates of Qualification or Registration pursuant to the following provisions:

(a) Plumbing Contractors' Certificates of Qualification or Registration shall be issued to every person who makes application for such certificate, pays the required fee and successfully passes the examination conducted by the Board of Plumber Examiners, provided however, that in lieu of an examination the Board may issue such a Certificate to any person who makes application therefor, pays the required fee and possesses and presents to the Board a valid Certificate of Qualification or Registration issued to him by any other governmental agency giving an examination the scope and character of which, in the opinion of the Board, is at least equal to that given by the Board of Examiners.

(b) Journeyman Plumber's Certificates of Qualification or Registhation (sic.) shall be issued to every person who makes application for such certificate, pays the required fee and successfully passes the examination conducted by the Board of Plumber Eaminers, provided, however, that the Board may issue such a Certificate to any person who makes application therefor, pays the required fee and possesses and presents to the Board a valid Journeyman Plumber's Certificate of Qualification or Registration issued to him by any other governmental agency giving an examination the scope and character of which, in the opinion of the Board, is at least equal to that given by the Board of Examiners.

Sec. 306—Plans Required

The Administrative Authority may require the submission of plans, specifications, drawings, and such other information as he may deem necessary, prior to the commencement of, and at any time during the progress of any work regulated by this code.

The issuance of a permit upon plans and specifications shall not prevent the Administrative Authority from thereafter requiring the correction of errors in said plans and specifications or from preventing construction operations being carried on thereunder when in violation of this code or of any other pertinent ordinance or from revoking any certificate of approval when issued in error.

Sec. 309—Workmanship

(a) All design, construction and workmanship shall be in conformity with accepted engineering practices and shall be of such character as to secure the results sought to be obtained by this code.

* * * *

Sec. 321—Health and Safety

Whenever compliance with all the provisions of this code fails to eliminate or alleviate a nuisance, or any other dangerous or insanitary condition which may involve health or safety hazards, the owner or his agent shall install such additional plumbing and drainage facilities or shall make such repairs or alterations as may be ordered by the Administrative Authority.